

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR**DIVISION BENCH**

**CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.**

Writ Petition No. 1907 of 2006**PETITIONER**

M/s. Mohd. Kasim, through – Partner
Shekh Niyamtulla, Aged about 42.
S/o. Shri Mohd. Kasi, R/o. Darri Road,
Qtr. No. 173, Ward No. 01, Ram
Sagarpara, Korba, Tahsil & District
Korba (C.G.)

VERSUS**RESPONDENTS**

1. Chhattisgarh State Electricity Board,
Through the Member of Generation,
Danganiya, Near Rajkumar College,
Raipur (C.G.)
2. The Chief Engineer (Generation
Hasdev Thermal Power Station,
Chhattisgarh State Electricity Board
Korba (West), Post Jailgaon, Tahsil
Katghora, District Korba (C.G.)
3. The Superintendent Engineer,
(Purchase & Works) Hasdev Thermal
Power Station, Chhattisgarh State
Electricity Board, Post Jailgaon, Tahsil
Katghora, District Korba (C.G.)

Present: Shri Anand Kumar Tiwari, learned counsel for the petitioner.
Shri Ashutosh Singh Gaharwar, learned counsel for
C.S.E.B./respondents.

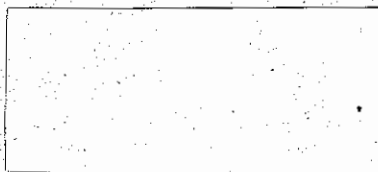
ORAL ORDER

(Passed on 25th July, 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ.

In this writ petition, the petitioner who is a contractor complains that
without any justification, the respondents refused to issue tender



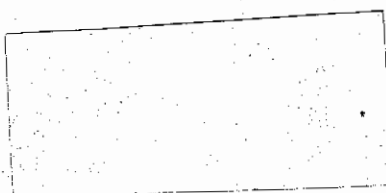
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documents to him when he approached them for supply of tender documents in response to tender Notification No.165/2006.

(2) The facts of the case, in brief, are as follows:

The Superintendent Engineer (Purchase & Works) Hasdev Thermal Power Station, Chhattisgarh State Electricity Board at Jailgaon issued tender Notification No.165/2006, dated 27-02-2006 floating ten tenders for various works. The last date to apply with regard to the Tender Specification No.021-1-/BLR/T 288/06 was 06/04/2006 and with regard to Tender Specification No.021-10/BLR/T 290/06 was 07/04/2006. According to the petitioner, he personally went to the office of the third respondent on 30/03/2006 for obtaining tender documents; the third respondent refused to supply tender documents to the petitioner orally observing that since the petitioner has instituted a civil suit against the Electricity Board in civil Court, Katghora he would not supply tender documents to the petitioner. It is the further case of the petitioner that on 31/03/2006, he wrote a letter to the Chief Engineer (Generation) Hasdev Thermal Power Station, Chhattisgarh State Electricity Board, Korba (West) Jailgaon, the second respondent herein, by registered post and also through electronic Fax communication complaining against the refusal of the third respondent to supply tender documents. A copy of the said letter is annexed to the writ petition as Annexure-P/2. That was followed, according to the petitioner, by one more communication addressed to the second respondent on 05.04.2006. The petitioner complaining that even the second respondent did not respond to the two communications filed this writ petition on 10.04.2006 praying for the following reliefs:

"7. RELIEF(S) SOUGHT



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The petitioner most respectfully and humbly prays for the following reliefs:-

The Hon'ble Court may kindly be pleased :

- 7.1 to kindly direct the respondents by issuing a writ of mandamus to the effect that the tender documents may be supplied to the petitioner and also while doing so the bids of the petitioner may be considered.
- 7.2 to kindly quash any order or letter issued by the respondents finalizing or awarding contract in relation to **Tender Specification 021-10/BLR/T 288/06 & Tender Specification 021-10/BLR/T 290/06**
- 7.3 to kindly quash the tender process with regard to the **Tender Specification 021-10/BLR/T 288/06 & Tender Specification 021-10/BLR/T 290/06** and direct the respondents to invite fresh bids and confirm the same as per law.
- 7.4 to kindly grant any other relief as may be deemed just and proper under the facts and circumstances of the case.
- 7.5 to kindly allow the cost and expenses of the petition".

(3) On service of notice, a detailed reply was filed on behalf of the respondents. In the reply, the respondents have squarely denied the assertion made by the petitioner as to what transpired on 30.03.2006. The respondents, however, have acknowledged receipt of the letters of the petitioner sent to the second respondent on 31.03.2006 and 05.04.2006. Para 5 of the return reads as follows:

"5. That however, a letter dated 31.03.2006 was received and entered in the Receipt Register, which is evident from Annexure-R/2. That as submitted above, as per para 2 of the NIT the tender documents could be obtained from the office of S.E. (P&W), CSEB, Korba West on payment of Tender Fee and if, it was required by post; then additionally, a fee of Rs.75/- through crossed Postal Order/DD was also to be

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accompanied along with the supporting documents, as required in para 4 of the NIT.

It is submitted that the petitioner has neither approached to the office of S.E(P&W), HTPS, Korba West nor, any application from the petitioner along with necessary tender fee/additional fee for supply of Tender document by Post was received in the O/o S.E. (P&W), CSEB, Korba West. Therefore, the allegation of the petitioner is frivolous, and is only an after thought, for the reasons best known to the petitioner, and only to harass the respondents.

(4) Furthermore, in para 9 of the return, it is stated that after processing the tenders, two contracts have been awarded to M/s. Rukmani Engineering Works, Jamnipali, Korba and M/s. Brilliant Electrical, Jamnipali, Korba vide Order No.021-10/BLR/T-290/06 2147, dated 15.06.2006 and Order No.021-10/BLR/T-288/06 2159 dated 16.06.2006 respectively.

(5) We have heard learned counsel for the parties. Learned counsel for the petitioner would strenuously contend that the refusal of the third respondent to supply tender documents on 30/03/2006 though the petitioner fulfilled all formalities was totally objectionable and unjustified and that had violated the petitioner's right to equality guaranteed under Article 14 of the Constitution of India. Learned Standing Counsel for the C.B.S.E., *per contra*, drawing our attention to what is averred in the return would submit that no representative of the petitioner approached the third respondent on 30/03/2006 for supply of tender documents and what is averred in the writ petition to the contrary is factually incorrect. Learned Standing Counsel would further contend that though a letter was received by the second respondent from the petitioner on 31/03/2006, tender documents were not supplied to the petitioner, because, he did not pay the

fee for supply of tender forms and additional cost of Rs. 75/- towards postal charges to send tender documents by post apart from not fulfilling the other formalities fixed by the N.I.T.

(6) Having heard learned counsel for the parties, a short question that arises for our decision is whether the respondents-authorities of the CBSE acted illegally in refusing supply of tender documents to the petitioner with regard to the two contracts referred to above. We do not think so. The self-serving statement made by the petitioner in the writ petition with regard to what transpired on 30/03/2006 cannot be accepted as a true version, particularly, in view of the denial of that version by the respondents on oath. It is a case of assertion and denial on oath and except the two, there is absolutely no other independent material produced by the petitioner on the basis of which we could possibly accept the version of the petitioner as correct.

(7) This takes us to the question whether after receipt of the letter of the petitioner by the second respondent on 31/03/2006, the respondents were under a legal obligation to furnish tender documents to the petitioner. The defence of the respondents not to furnish tender documents to the petitioner is that the petitioner did not send demand draft towards the fee payable for supply of tender documents and additional fee of Rs. 75/- towards postal charges apart from not complying with other formalities prescribed by the N.I.T. Admittedly, with the letter dated 30/03/2006 and even the subsequent communication dated 05/04/2006, the petitioner did not send demand draft towards the cost of the tender forms and additional expenditure to be incurred by the Board for sending tender documents by post. If that was the reason for the respondents not to send tender

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documents to the petitioner, the Court would not be justified in condemning the refusal of the respondents to supply the tender documents to the petitioner. Be that as it may, now, it is stated that the Board after processing the tenders of the eligible persons which were in order has awarded the contract to the most suitable two contractors referred to above. They are also not made parties to the writ petition. Any intervention at this distance of time would come in the way of halting the public work, which will not be conducive to public interest. Looking from any angle, this is not a fit case where we should step in under Article 226 of the Constitution and upset the contracts already awarded to the two contractors. The petition is, therefore, devoid of merit and it is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge

Prasanna